

Fulfilling the Safe Harbor Promise: Enhancing Resources for Sexually- Exploited Youth to Create a True Victim- Centered Approach

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Introduction

Sex trafficking is estimated to be anywhere between a \$32 billion and \$150 billion dollar industry and is the fastest growing crime in the world.¹ Prior to 2011, states struggled with determining how to classify youth who were exploited by the sex trafficking industry.² Despite the enactment of the Trafficking Victim's Protection Act,³ which classified these minors as victims, many states continue to adjudicate sexually-exploited youth as delinquents.⁴ In recent years, some jurisdictions have made a push toward enacting legislation that not only defines juveniles as victims, but provides them with additional resources.⁵ Minnesota, a state with one of the highest youth-trafficking rates, was one of the first states to pass legislation to protect sexually-exploited youth.⁶ In 2011, the Minnesota legislature passed a Safe Harbor

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1. Lane Anderson, *Human Trafficking is the Fastest-Growing Crime in the World, Despite Awareness*, DESERET NEWS U.S. & WORLD (Jan. 11, 2015), <http://national.deseretnews.com/article/3223/human-trafficking-is-the-fastest-growing-crime-in-the-world-despite-awareness.html> ("The International Labor Organization estimates that trafficking is now a \$150 billion industry, which is about three times larger than previous estimates."); see also Eleanor Goldberg, *Human Trafficking Survivors Open Up About Horrors*, HUFFINGTON POST (Jan. 8, 2015), http://www.huffingtonpost.com/2015/01/08/human-trafficking-victims_n_6425520.html (citing the U.S. State Department, which estimates that human trafficking is a \$32 billion industry and is the world's fastest growing criminal enterprise).

2. Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 108 (2008).

3. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008).

4. Adelson, *supra* note 2, at 116–17.

5. *Id.* at 111.

6. WOMEN'S FOUND. OF MINN., *Get the Facts*, <http://www.wfmn.org/mn-girls->

Provision that prohibits trafficked youth from being prosecuted for prostitution.⁷ Despite this Safe Harbor legislation, many sex-trafficked youth continue to face substantial consequences as a result of being trafficked.⁸ Minnesota needs further legislation to create accessible services for victims and to prohibit them from being charged with delinquent offenses stemming from their exploitation. If Minnesota wishes to combat its child sex trafficking problem, it should educate children about appropriate relationships at a young age, enact record-clearing policies, and create an affirmative defense to prostitution-related charges. Once these additional protections are in place, Minnesota will be closer to having a true victim-centered approach that was the catalyst for the 2011 Safe Harbor Provision. A victim-centered approach ensures that victims do not experience any negative repercussions from the government, their landlords, or employers because of their sexual exploitation.⁹

This Article highlights both the successes of Minnesota's Safe Harbor Law for Sex Trafficked Youth and its shortcomings. Part I begins with an overview of sex trafficking and the populations at risk in Minnesota. Part II looks at the evolution of federal and state law concerning sex-trafficked youth. Part III discusses various protections afforded to victims across the county. Parts IV and V conclude by discussing Minnesota's Safe Harbor Law and how Minnesota can have a true victim-centered approach.

I. Youth Should Receive Greater Protections Because of Their Vulnerability to Sex Trafficking

a. Children Are Targeted at a Young Age

Sex trafficking of a minor occurs when a person, male or female, under the age of eighteen, participates in a commercial sexual activity.¹⁰ "A commercial sexual activity occurs when anything of value or a promise of anything of value . . . is given to

are-not-for-sale/educate/get-the-facts/ (last visited Jan. 12, 2017) (explaining that the FBI has identified the Twin Cities as one of thirteen U.S. cities with a high incidence of child prostitution).

7. MINN. STAT. § 260B.007, SUBD. 6c (effective Aug. 1, 2014) (West 2015).

8. See WOMEN'S FOUND. OF MINN., *supra* note 6 (explaining that victims of human trafficking face ongoing physical and emotional violence, including rape).

9. See *Victim-Centered Approach*, DEP'T OF JUSTICE, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited Oct. 16, 2016).

10. *Safe Harbor Minnesota*, MINN. DEP'T OF HEALTH, <http://www.health.state.mn.us/injury/topic/safeharbor/> (last visited Jan. 12, 2017).

a person by any means in exchange for any type of sexual activity.”¹¹ Children can participate in a commercial sexual activity with or without a third party, but are often under the control of one.¹² A trafficker, sometimes referred to as a “pimp,” is a third party who arranges a client for the child and keeps the earnings that the youth generates.¹³ The United Nations Office of Drugs and Crime reports that child sex trafficking is on the rise in countries all over the world, including the United States.¹⁴ In the United States, estimates suggest that there are as many as 300,000 children who are at risk of entering the commercial sex trade.¹⁵

Children are particularly desirable to pimps because of the high monetary return that they can yield.¹⁶ In fact, seventy-five percent of girls who are sex-trafficked are controlled by a pimp.¹⁷ One of the reasons that commercial sexual exploitation has been increasing in popularity is because of the potential for high financial gains with fewer risks than other illegal activities.¹⁸ Currently, it is estimated that a pimp can make \$150,000–\$200,000 per child, each year.¹⁹ It is also estimated that 100,000–300,000 children are sold for sex across the United States each year.²⁰ Areas where youth are targeted for recruitment include schools, parks, shelters and youth programming facilities, juvenile detention and treatment facilities, streets, bus stops, libraries, and malls.²¹ According to a study conducted by the Women’s Foundation of Minnesota and the University of Minnesota

11. *Id.*

12. *See id.* (noting that a third party may or may not be involved).

13. *Pimp*, MERRIAM-WEBSTER, www.merriam-webster.com/dictionary/pimp (last visited Jan. 12, 2017).

14. *Trafficking in Children on the Rise, Says New UN Report*, UN NEWS CENTRE, <http://www.un.org/apps/news/story.asp?NewsID=49423#.Vju0mekXjgV> (last visited Jan. 12, 2017).

15. William Adams et al., *Effects of Federal Legislation on the Commercial Sexual Exploitation of Children*, JUV. JUST. BULL., July 2010, at 1.

16. WOMEN’S FOUND. OF MINN., *supra* note 6 (illustrating that a pimp with three girls or women can an average between \$500 and \$1,500 per night).

17. *Id.*

18. MINN. HUMAN TRAFFICKING TASK FORCE, HUMAN TRAFFICKING & HOMELESS/RUNAWAY YOUTH (2014), http://mnhttf.org/site/wp-content/uploads/2014/04/Human-Trafficking-and-Youth_April-2014.pdf.

19. *Trafficked Teen Girls Describe Their Life in ‘The Game’*, NAT’L PUB. RADIO (Dec. 6, 2010, 4:26 PM), <http://www.npr.org/2010/12/06/131757019/youth-radio-trafficked-teen-girls-describe-life-in-the-game>.

20. *Id.*

21. Pam Louwagie, *U Study Documents Juvenile Sex Trafficking in Minneapolis*, STAR TRIB. (Sept. 10, 2014, 10:16 AM), <http://www.startribune.com/u-study-documents-juvenile-sex-trafficking-in-minneapolis/274559791/>.

Children, Youth & Family Consortium, “[t]raffickers often target[] runaways, homeless kids, teens living in poverty, youth with cognitive delays, and youth with a history of chemical use or history of abuse.”²²

The study further indicates that sex traffickers often lure children into commercial sex trafficking by a feigning a romantic interest in the child.²³ The pimp initially provides attention, care, and emotional support to the child before coercing him or her into prostitution.²⁴ Moreover, it is common for pimps to target and deceive vulnerable youth because they are in desperate situations.²⁵ In general, it is easier for pimps to target and deceive youth because adolescent brains are not fully developed.²⁶ This lack of brain development affects behavior, decision-making, risk assessment, and the ability to fully comprehend consequences.²⁷ Among other traits, adolescents are less likely to consider future consequences of their actions;²⁸ they are less sensitive to risk and more sensitive to rewards,²⁹ and are heavily affected by peer influence.³⁰ Importantly, juveniles who live in poverty-stricken neighborhoods are more likely to face coercive situations, which contribute to the high number of trafficked low-income youth.³¹

It is vital to recognize that pimps have a strategy for targeting children that is fueled by customer demand.³² First, pimps target youths who live in poverty-stricken neighborhoods and are in vulnerable situations. Because youths in general are more susceptible to pimps’ tactics, it is extremely likely that pimps will be able to exploit them.³³

After the child has been targeted and becomes of a victim of prostitution, the pimp uses control tactics to display power over the victim. These tactics include sexual assaults, threats,

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Cf.* MACARTHUR FOUND. RES. NETWORK ON ADOLESCENT DEV. & JUV. JUST., LESS GUILTY BY REASON OF ADOLESCENCE 3–4 (2006), http://www.adjj.org/downloads/6093issue_brief_3.pdf (arguing that courts “need to consider the developmental stage of adolescence as a mitigating factor when juveniles are facing criminal prosecution”).

27. *Id.* at 2.

28. *Id.*

29. *Id.*

30. *Id.* at 2–3.

31. *Id.* at 3; Louwagie, *supra* note 21.

32. *See* NAT’L PUB. RADIO, *supra* note 19.

33. *See* MACARTHUR FOUND., *supra* note 26.

coercion, isolation, and physical assaults.³⁴ The control tactics that pimps use make it difficult for a victim to safely leave his or her pimp and the industry.³⁵ The pimps' ability to successfully target and control children for a substantial profit³⁶ suggests that this problem will continue to persist.

b. Sex Traffickers Target Minnesota's Vulnerable Populations

According to the FBI, the Twin Cities is one of thirteen U.S. cities with the highest rate of child sex trafficking.³⁷ “[O]n any given weekend night in Minnesota, 45 girls under the age of 18 are sold for sex through the Internet and escort services.”³⁸ Although the ages of youth involved in sex trafficking vary, on average, the age of entry into prostitution by children in the United States is twelve to fourteen years old.³⁹ Studies demonstrate that, in the North Minneapolis Black community, fifty percent of people who had traded sex in the past five years first did so at an average age of thirteen.⁴⁰ Like other states, Minnesota has an overrepresentation of communities of color as facilitators and victims of sex trafficking.⁴¹ Some studies focusing on the intersection of youth homelessness and sex trafficking have found a positive correlation between the targeting and vulnerability of

34. MINN. HUMAN TRAFFICKING TASK FORCE, HUMAN TRAFFICKING & SEXUAL AND DOMESTIC VIOLENCE (2014), http://mnhttf.org/site/wp-content/uploads/2014/04/Human-Trafficking-and-Sexual-and-Domestic-Violence_April-20141.pdf.

35. POLARIS PROJECT, DOMESTIC SEX TRAFFICKING: THE CRIMINAL OPERATIONS OF THE AMERICAN PIMP 1, <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/domestic-sex-trafficking-criminal-operations-american-pimp.pdf> (last visited Jan. 12, 2017) (identifying beating, slapping, whipping, burning, confinement, emotional abuse, re-naming, removal from familiarity and support structure, and document confiscation as methods used by a pimp to control a girl or boy).

36. *Id.* at 4 (illustrating one instance in which a pimp earned approximately \$632,000 in a year while sex trafficking four girls).

37. WOMEN'S FOUND. OF MINN., *supra* note 6.

38. *Id.*

39. LINDA A. SMITH ET AL., THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN 30 (2009), http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf (stating that the greatest vulnerability for girls between the ages of twelve and fourteen years old is their age).

40. MINN. HUMAN TRAFFICKING TASK FORCE, STATISTICS ABOUT SEX TRAFFICKING IN MINNESOTA AND THE UNITED STATES (2014), <http://mnhttf.org/site/wp-content/uploads/2015/12/Statistics-about-Sex-Trafficking-in-Minnesota-and-the-United-States1.pdf>.

41. *Id.*

poor youth.⁴² These studies illustrate that fourteen to twenty percent of homeless youth in Minnesota have engaged in sex in exchange for money, food, drugs, or other commodities.⁴³ Additionally, it is estimated that forty-four percent of homeless lesbian, gay, and bisexual youth have been approached with the proposition of engaging in survival sex.⁴⁴ Because vulnerable children in Minnesota and across the country are commonly targeted, it is clear that the Minnesota legislature must ensure that the Safe Harbor Provision provides adequate protection for these groups.

II. Over Time, the Federal and State Governments' Stances on Youth Sex Trafficking Have Become Compatible

a. The Federal Government Labels Children as Victims and Provides Resources to Victims

The federal government and state governments have adopted legislation in response to the growing sex trafficking industry. “The Trafficking Victims Protection Act (TVPA) of 2000 was the first comprehensive federal law to address trafficking in persons.”⁴⁵ Congress reauthorized the TVPA in 2003, 2005, 2008, and 2013. The TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for purpose of a commercial sex act.”⁴⁶ Trafficking “in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age” is considered a “severe” form of trafficking.⁴⁷ Thus, regardless of the circumstances, any minor under eighteen-years-old who performs a commercial sexual act is considered a victim. The federal government also instituted strict sentencing provisions for sex offenders, including both traffickers and buyers,

42. *Id.* (stating that victims of sex trafficking often reside in neighborhoods with high levels of poverty).

43. *Id.*

44. *Id.* (explaining that survival sex is engaging in sex in exchange for food, money, shelter, etc.).

45. *Federal Law*, NAT'L HUMAN TRAFFICKING RES. CTR., <https://traffickingresourcecenter.org/what-human-trafficking/federal-law> (“The law provides a three-pronged approach that includes prevention, protection, and prosecution.”); *see also* Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§ 7101–7113 (2012).

46. 22 U.S.C. §§ 7101–7113 (2012); *see also* NAT'L HUMAN TRAFFICKING RES. CTR., *supra* note 45.

47. NAT'L HUMAN TRAFFICKING RES. CTR., *supra* note 45.

to demonstrate its anti-trafficking stance.⁴⁸ The sentences for convicted sex traffickers are contingent upon the age of the victim with the possibility of both fines and life imprisonment if convicted of trafficking a minor under fourteen years old, and twenty years of imprisonment and fines for trafficking children between the ages of fourteen and seventeen.⁴⁹ The federal government paved the way for states to reconsider how they view sex trafficking by labeling sex-trafficked youth as victims and imposing strict sentences on convicted trafficking offenders.⁵⁰

The Justice for Victims of Trafficking Act of 2015 was passed by the House and Senate and signed into law by President Obama on May 29, 2015.⁵¹ The Justice for Victims Trafficking Act (JVTA) “provides resources to law enforcement officials and collects fees from sex traffickers that go into a new fund for victims.”⁵² For example, any non-indigent person convicted of sexual exploitation and other abuse of children must pay an additional fee of \$5,000.⁵³ These fines will be deposited into the Domestic Trafficking Victims’ Fund, which awards “grants to states and localities to combat trafficking, provide[s] protection and assistance for victims of trafficking, develop[s] and implement[s] child abuse investigation and prosecution programs, and provide[s] services for victims of child pornography.”⁵⁴ In addition, the JVTA speeds up the process for victims to receive federal benefits and demands an annual Justice Department report on how states are enforcing sex trafficking laws.⁵⁵ The implementation of this law demonstrates the need for sex trafficking laws that go beyond labeling someone who has been sex-trafficked as a victim. The JVTA highlights the importance of

48. Kimberly Mehlman-Orozco, *Safe Harbor Policies for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice*, 3 SOCIAL INCLUSION 52, 54–55 (2015).

49. 18 U.S.C. § 1591(b) (2012); *see also* Mehlman-Orozco, *supra* note 48, at 54.

50. Mehlman-Orozco, *supra* note 48, at 55.

51. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227 (2015).

52. Jennifer Bendery, *Senate Passes Human Trafficking Bill with Abortion Restrictions on Victims*, HUFFINGTON POST (Apr. 22, 2015, 4:33 PM), http://www.huffingtonpost.com/2015/04/22/sex-trafficking-bill-abortion_n_7120028.html.

53. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 3014, 129 Stat. 227, 229 (2015).

54. CONG. RESEARCH SERV., SUMMARY: S. RES. 178, 114TH CONG. (2015–2016), <https://www.congress.gov/bill/114th-congress/senate-bill/178> (last visited Nov. 6, 2016).

55. Cheryl Wetzstein, *Human Trafficking Bill Goes to Obama*, WASH. TIMES (May 19, 2015), <http://www.washingtontimes.com/news/2015/may/19/human-trafficking-bill-goes-to-president-obama/?page=all>.

increasing both punishments and resources to effectively combat child sex trafficking.

b. Prior to 2004, Many States Labeled Sex-Trafficked Youth as Delinquents

For many years, the federal government's anti-trafficking stance was in tension with many state criminal statutes that defined prostitution without regard to age.⁵⁶ The inconsistencies in the treatment of victims of sex trafficking under federal versus state laws led to the criminalization of many victims.⁵⁷ While the federal government considered the child a victim and prohibited the child from being prosecuted, state governments labeled the child as a delinquent and prosecuted the child for prostitution.⁵⁸ As a result, many sex-trafficked children were placed in juvenile detention facilities.⁵⁹ The Department of Justice reported that 1,500 minors were arrested for sex trafficking in 2008.⁶⁰ States and police organizations that are not in compliance with the TVPA are not held accountable for their actions, creating little incentive for them to deviate from their pre-established policies.⁶¹ Unfortunately, from the passage of the TVPA in 2000 to 2015, it was common to hear stories of sex-trafficked youth spending time at juvenile detention facilities.⁶² Keisha, a sex trafficking survivor who spent time in a juvenile detention facility because of

56. See *Domestic Minor Sex Trafficking: Hearing Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong. 2–3 (2010) (statement of Rep. Robert C. Scott, Chairman, H. Subcomm. on Crime, Terrorism, & Homeland Sec.) (explaining that minors are often arrested and prosecuted for prostitution).

57. See *id.* at 36–37 (statement of Rep. Carolyn B. Maloney Gohmert, Member, Representative, H. Comm. on the Judiciary) (noting that, while interstate trafficking is a federal issue, local law enforcement “is just tossing kids in jail while ignoring the broader problem”).

58. Susan Crile, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783, 1788–89 (2012).

59. KRISTIN FINKLEA, CONG. RESEARCH SERV., JUVENILE VICTIMS OF DOMESTIC SEX TRAFFICKING: JUVENILE JUSTICE ISSUES 3 (2014), <https://www.fas.org/sgp/crs/misc/R43677.pdf>; see also *How Does Your State Rate on Human Trafficking Laws?*, POLARIS PROJECT (2011) (highlighting that only a handful of states had adequate sex trafficking provisions in place in 2011).

60. Richard A. Hooks Wayman, Exec. Dir., Hearth Connection, Presentation at ABA Commission on Homelessness and Poverty, *Safe Harbor Laws: Policy in the Best Interest of Victims of Trafficking* (2013) (discussing the number of teenagers involved in commercial sexual exploitation in the United States).

61. See Mehlman-Orozco, *supra* note 48, at 54.

62. See *Survivor Story: From Foster Care to Sex Trafficking*, POLARIS PROJECT (Mar. 17, 2015), <http://polarisproject.org/blog/2015/03/17/survivor-story-foster-care-sex-trafficking>.

inadequate state laws, is one example.⁶³ Keisha ran away from her foster home when she was fourteen years old to avoid sexual harassment.⁶⁴ After leaving her foster home, she met a twenty-six-year-old man who offered to help find her biological family.⁶⁵ Keisha went with the man to Florida in attempt to find her family, but immediately upon their arrival, he began threatening her and forcing her to have commercial sex.⁶⁶ As a result, Keisha was arrested for solicitation twice, resulting in a juvenile detention stay both times.⁶⁷ Upon release from the juvenile detention facility, Keisha faced two grim options: go back to her foster home where she faced sexual harassment or return to her sex trafficker.⁶⁸ Keisha's story is typical of children who have been sex-trafficked and demonstrates the common result of being placed at a juvenile detention center despite the enactment of the TVPA.

State prostitution laws were not only incompatible with the TVPA, but also with their own consent laws. All states have some form of age-of-consent laws, which presume that minors under a certain age cannot consent to sex.⁶⁹ State prostitution laws, however, called for the criminalization of prostitution regardless of age.⁷⁰ The New York Penal Code is an example of the contradiction between consent and prostitution laws.⁷¹ New York's consent law provides that children seventeen years old and younger could not consent to sex, but children as young as eleven were incarcerated for prostitution.⁷² In 2004, a juvenile convicted of prostitution challenged this inconsistency under New York law.⁷³ Although the juvenile was only twelve years old at the time of her arrest, which was below the age to consent to a sexual act, she was still adjudicated a delinquent for prostitution.⁷⁴ The delinquency determination was upheld on appeal,⁷⁵ but the

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Adelson, *supra* note 2, at 108 (“[E]very state has a minimum age before which engaging in sex with a minor constitutes either rape or sexual assault.”).

70. *Id.* (“It is logically inconsistent that minors of a certain age are incapable of consenting to sex, but that they simultaneously can be punished for prostitution.”).

71. Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C.L. REV. 1281, 1307–08 (2015).

72. *Id.*

73. *In re Nicolette R.*, 9 A.D.3d 270, 270–71 (N.Y. App. Div. 2004).

74. *Id.* at 271.

75. *Id.*

decision prompted the New York legislature to enact strict anti-trafficking laws in 2007.⁷⁶ In 2010, a case with almost identical facts to *In re Nicolette R.* was heard in Texas.⁷⁷ In *In re B.W.*, the Texas Supreme Court held that children under the age of fourteen, who cannot legally consent to sex, should not at the same time be charged with prostitution.⁷⁸ The court reasoned that prostitution of youth under the age of fourteen constitutes exploitation, and the fundamental purpose behind statutory rape and trafficking laws is to protect children from exploitation.⁷⁹ The Texas Supreme Court ruling was significant because it affirmed the notion that sex-trafficked youth should be treated as victims.

It took states a number of years, however, to change their prostitution statutes so they were compatible with both state consent laws and the TVPA. As of 2013, eighteen states had passed safe harbor policies, but only five of these policies were passed before 2011.⁸⁰ In 2014, the enactment of new anti-trafficking laws in at least thirty-one states harmonized the opposing sex trafficking philosophies of state governments and the federal government.⁸¹ The legislation focused on addressing the trafficking of children and the “development of rehabilitative services for exploited youth.”⁸² Legislation that contains protective provisions for sex-trafficked children is often known as a “safe harbor” law.⁸³ Safe harbor laws have four main functions: decriminalizing prostitution for anyone under a certain age; directing minors to supportive services rather than delinquency proceedings; providing effective services; and reclassifying minors as victims.⁸⁴ The states that did not follow suit or did not enact adequate safe harbor legislation received a low rating from the Polaris Project, an organization working on combatting all forms

76. Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 38 (2011).

77. *In re B.W.*, 313 S.W.3d 818 (Tex. 2010); see also Annitto, *supra* note 76, at 35 (discussing *In re B.W.*).

78. *In re B.W.*, 313 S.W.3d at 826 (“In the absence of a clear indication that the Legislature intended to subject children under fourteen to prosecution for prostitution when they lack the capacity to consent to sex as a matter of law, we hold that a child under the age of fourteen may not be charged with that offense.”).

79. *Id.* at 823.

80. Mehlman-Orozco, *supra* note 48, at 56.

81. *Human Trafficking Overview*, NAT'L CONF. OF STATE LEGISLATURES (May 9, 2014), <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-overview.aspx>.

82. *Id.*

83. *Id.*

84. See Hooks, *supra* note 60.

of human trafficking.⁸⁵ The Polaris Project identified eleven states, in addition to the District of Columbia, that failed to make minimal efforts to pass laws supporting victims.⁸⁶ Since the publication of the 2014 Polaris Project Report, states labeled as needing improvement, such as North Dakota, have made significant efforts to improve their sex trafficking laws.⁸⁷ Thus, the focus has shifted from discrepancies in how children are labeled—as victim or delinquent—to the adequacy of services provided to victims in each state.

III. The Amount and Nature of Protections Afforded to Victims Varies Greatly Between States

a. New York's Record-Clearing Policy

In 2008, New York passed the Safe Harbour for Sexually Exploited Children Act (NYSHA) and became the first state to enact state-wide safe harbor legislation.⁸⁸ Although New York's safe harbor law was passed in 2008, it did not go into effect until nearly two years later in April 2010.⁸⁹ The main premise of NYSHA is that sex-trafficked youth should be labeled as victims and provided services.⁹⁰ A significant service that New York provides to sex-trafficked victims is the ability for them to clear their records.⁹¹ New York, along with fifteen other states, allows victims to petition to clear their records of prostitution or related offenses.⁹²

85. *2014 State Ratings on Human Trafficking Laws*, POLARIS PROJECT (2014), <https://polarisproject.org/resources/2014-state-ratings-human-trafficking-laws> (categorizing state human trafficking laws in four tiers).

86. *Id.* (identifying Arizona, Idaho, Iowa, Maine, Michigan, Montana, North Dakota, Rhode Island, South Dakota, Washington D.C., West Virginia, and Wyoming as the states that have failed to make minimal efforts to pass laws that support victims).

87. Amy Dalrymple, *Tougher North Dakotan Human Trafficking Laws Take Effect Today*, INFORUM (Aug. 1, 2015, 4:30 AM), <http://www.inforum.com/news/3808901-tougher-north-dakota-human-trafficking-laws-take-effect-today>.

88. N.Y. SOCIAL SERVICE LAW § 447-b (McKinney 2010); *see also* Mehlman-Orozco, *supra* note 48, at 57.

89. *Id.*

90. Editorial, *A Victory for Exploited Children*, N.Y. TIMES (Sept. 26, 2008), http://www.nytimes.com/2008/09/27/opinion/27sat3.html?_r=0.

91. Whitney J. Drasin, *New York's Law Allowing Trafficked Persons to Bring Motions to Vacate Prostitution Convictions: Bridging the Gap or Just Covering it Up?*, 28 *TOURO L. REV.* 489, 489 (2012) ("On August 13, 2010, former Governor David Paterson signed a bill, which amended New York State Criminal Procedure Law section 440.10, permitting victims of commercial sex trafficking to wipe their records clean of prostitution-related crimes by vacating their convictions.").

92. NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 81.

Record-clearing is significant because of the impact that it has while sex trafficking victims are both under the control of pimps and after they leave the industry or their traffickers.⁹³ Once convicted, “traffickers frequently tell victims that a criminal record will prevent them from obtaining employment,” and that—because of their convictions—“no one will believe them if they file a report against their traffickers.”⁹⁴ Traffickers utilize these control tactics to prevent victims from leaving the industry.⁹⁵ If victims are able to escape, they are often plagued with many of the problems threatened by their traffickers.⁹⁶ For example, prostitution-related convictions can prevent a victim from obtaining employment and public or private housing.⁹⁷ A conviction can also be used as evidence of unfit parenting in a custody dispute and can prevent an undocumented victim from legalizing his or her immigration status.⁹⁸ To address the serious ramifications that victims face, New York included a record-clearing provision in its safe harbor law that allows prior prostitution convictions to be removed.⁹⁹

Although the possibility for record-clearing exists, it is not automatic. New York has enacted specific standards that allow justice officials to grant or deny the request.¹⁰⁰ First, the arresting charge must be either “loitering for the purpose of engaging in prostitution” or “prostitution.”¹⁰¹ Second, motions under this law can only be made after the victim has stopped participating in sex trafficking or has sought services for sex trafficking to demonstrate that the victim is attempting to leave the industry.¹⁰² Critics of the law argued that charges of prostitution or loitering for the purpose of prostitution denied relief to victims forced by

93. Alyssa M. Barnard, “*The Second Chance They Deserve*”: *Vacating Convictions of Sex Trafficking Victims*, 114 COLUM. L. REV. 1463, 1492 (2014) (discussing New York’s increase in prostitution arrests despite the passage of the safe harbor law).

94. *Id.* at 1472.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 1472–73.

99. *Id.* at 1474.

100. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2015); *see also* Barnard, *supra* note 93, at 1474.

101. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney 2015).

102. Barnard, *supra* note 93, at 1474. In addition to New York, fifteen other states—Connecticut, Florida, Hawaii, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Vermont, Washington, and Wyoming—enacted record-clearing policies for prior sex trafficking provisions as of January 2014. *Id.* at 1464.

traffickers to engage in other illegal activities such as possessing weapons or drugs.¹⁰³

*People v. L.G.*¹⁰⁴ raised the question of “whether convictions for non-prostitution offenses could be vacated without the prosecution’s consent.”¹⁰⁵ The defendant was forced into prostitution at the age of twelve and was arrested at the age of seventeen for loitering for prostitution and criminal possession of a weapon in the fourth degree.¹⁰⁶ The defendant was forced to carry a pocket-knife by her pimp after she had been assaulted by several “johns.”¹⁰⁷ The opinion recognized that legislative history supports extending relief to victims arrested for prostitution, but convicted of another offense; as such, the court held that the weapon conviction was the result of the defendant being a sex trafficking victim, and that section 440.10(6) allows judicial discretion to “take such additional action as is appropriate in the circumstances.”¹⁰⁸ As a result, the court vacated the weapons charge¹⁰⁹ because the charge was a result of the defendant having been trafficked and the arresting charge “could be considered a prostitution-related offense.”¹¹⁰ The discretion that is afforded to judges in clearing victims’ prior prostitution records indicates that minor, non-prostitution related offenses that result from trafficking will also be vacated.¹¹¹

Today, more than sixty women in New York have had their prostitution records cleared.¹¹² Kate Mogulescu, a Legal Aid attorney, who has helped clear the criminal records of numerous prostitutes said that, in her experience, a prostitution conviction precludes victims from accessing a wide variety of low-wage jobs, including as a “school bus matron.”¹¹³ One fifty-seven-year-old woman with 133 convictions from over twenty-six years ago had applied for jobs cleaning airplane cabins, cleaning offices, and

103. *Id.* at 1476.

104. *People v. L.G.*, 972 N.Y.S.2d 418, 420–21 (N.Y. City Crim. Ct. 2013).

105. Barnard, *supra* note 93, at 1477.

106. *L.G.*, 972 N.Y.S.2d at 420–21.

107. *Id.* at 421. “Johns” is a slang term referring to “buyers of commercial sex.” *Id.* at 428 n.7.

108. *Id.* at 426.

109. *Id.*

110. *Id.*

111. See Barnard, *supra* note 93, at 1474–80.

112. Edna Ishayik, *Law Helps Those Who Escape Sex Trafficking Erase Their Criminal Records*, N.Y. TIMES (Mar. 23, 2015), http://www.nytimes.com/2015/03/24/nyregion/law-helps-those-who-escape-sex-trafficking-shed-its-stigma-too.html?_r=0.

113. *Id.*

working at a concession stand, but has been unsuccessful because of her prostitution record.¹¹⁴ These examples illustrate the crippling effect that prostitution charges can have on victims while they are starting over.¹¹⁵ Allowing prior prostitution charges to be cleared treats those who have been sex-trafficked as victims, which is the primary goal in all safe harbor legislation.

b. Affirmative Defense for Prostitution Related Charges

In 2014, Arizona enacted a law creating an affirmative defense to certain criminal charges for sex trafficking victims.¹¹⁶ Along with Arizona, at least nineteen states allow a victim charged with prostitution related offenses to assert as an affirmative defense that their actions were a result of being victimized.¹¹⁷ An affirmative defense is “[a] defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts.”¹¹⁸ Creating an affirmative defense for prostitution related offenses helps ensure that sex trafficking victims are not punished for a crime stemming from their exploitation. North Dakota recently enacted new protections for victims of sex trafficking, which include immunity from the prosecution of certain crimes.¹¹⁹ The legislation has been in effect since August 1, 2015 and allows minors who are coerced into crime to be immune from possession of drugs or drug paraphernalia, bouncing checks, petty theft, and forgery.¹²⁰ The availability of an affirmative defense helps ensure that people who are sex-trafficked are actually treated as victims.

114. *Id.*

115. *Id.*

116. ARIZ. REV. STAT. ANN. § 13-701 (2014); see also *Arizona Laws*, GOVERNOR'S OFF. OF YOUTH, FAITH AND FAMILY, <http://endsextrafficking.az.gov/human-trafficking/arizona-laws> (last visited Oct. 12, 2016), for a summary for the amendment provisions.

117. See NAT'L CONF. OF STATE LEGISLATURES, *supra* note 81. Iowa, Kentucky, Louisiana, and Maine also enacted a similar affirmative defense in 2014.

118. *Affirmative Defense*, WEX LEGAL DICTIONARY & ENCYCLOPEDIA, https://www.law.cornell.edu/wex/affirmative_defense (last visited Sept. 30, 2016).

119. N.D. CENT. CODE § 12.1-32-15 (2015); see also *North Dakota Human Trafficking Law Offers "Safe Harbor" to Minors*, LAMAR ASSOCIATES (Aug. 12, 2015), <http://lamarassociates.blogspot.com/2015/08/north-dakota-human-trafficking-law.html>.

120. N.D. CENT. CODE § 12.1-41-13 (2015) (“An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense . . . committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.”).

IV. Minnesota's Safe Harbor Law

a. Safe Harbor Law: Round 1

Minnesota law defines sex trafficking as the “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of an individual; or receiving profit or anything of value, knowing or having reason to know it is derived from [the sex trafficking of an individual].”¹²¹ Minnesota’s Safe Harbor Provision, passed in 2011, ensures that youth who engage in sex trafficking are regarded as victims, not criminals.¹²² While these changes have been beneficial, loopholes in the Minnesota statute still allow sex-trafficked youth to be adjudicated as delinquents for crimes related to sex trafficking.

The new legislation was implemented in two waves: the first changes were implemented in 2011 and the second changes became effective in 2014.¹²³ Three changes became effective in 2011: the definition of “sexually exploited youth” was added to Minnesota’s child protection codes,¹²⁴ the penalties against commercial sex abusers or purchasers were increased,¹²⁵ and the Commissioner of Public Health was instructed to create a victim-centered statewide response for sexually-exploited youth.¹²⁶ A major problem with the first change, however, was that Minnesota’s Criminal Code makes trafficking of persons under eighteen a felony, but the Safe Harbor Law failed to recognize all trafficked persons under eighteen as victims.¹²⁷ Second, the penalties against commercial sex purchasers and abusers increased.¹²⁸ The revenue from the additional fines is given to local law enforcement and prosecuting agencies to support training to combat sexual exploitation.¹²⁹ Victim services agencies also began immediately receiving funds to further support their organizations.¹³⁰ Last, the 2011 passage of the Safe Harbor Law

121. MINN. STAT. ANN. § 609.321(7)(a) (West 2015).

122. *See Safe Harbor Minnesota*, *supra* note 10.

123. *Id.*

124. MINN. STAT. ANN. § 626.558(2)(a) (West 2015).

125. MINN. STAT. ANN. §§ 609.282, 609.283(2), 609.322(1)(a) (West 2015).

126. *See* MINN. STAT. § 145.4716 (West 2015).

127. *See* SAFE HARBOR: FULFILLING MINNESOTA’S PROMISE TO PROTECT SEXUALLY EXPLOITED YOUTH, THE ADVOCATES FOR HUMAN RIGHTS 3 (2013), http://www.theadvocatesforhumanrights.org/uploads/sh_2013_final_full_rept.pdf.

128. *Id.* at 5.

129. *Legislative Timeline*, MINN. DEPT OF HEALTH, http://www.health.state.mn.us/injury/topic/safeharbor/legislative_timeline.html (last visited Jan. 12, 2017).

130. SERV. PROVIDER COMM.: RED RIVER HUMAN TRAFFICKING RESPONSE TEAM,

resulted in the formation of a Safe Harbor Working Group, overseen by the Commissioner of Public Safety to identify what was needed to make sure the law would work when the 2014 provisions went into effect.¹³¹ Due to a lack of funding, the Women's Foundation of Minnesota used private dollars to help fund the working group.¹³² As a result, the No Wrong Door Model for responding to sexually-exploited youth or youth at risk of sexual exploitation was created.¹³³ The philosophy behind the No Wrong Door model is that "no matter where a sexually-exploited youth or a youth at risk of sexual exploitation seeks help—no matter which door [he or] she knocks on—[he or] she will be met with an effective victim-centered response."¹³⁴ Per statutory requirements, the No Wrong Door report was presented to the state legislature in January 2013.¹³⁵

b. Safe Harbor Law: Round 2

Two key changes from the Safe Harbor Law went into effect on August 1, 2014.¹³⁶ Sexually-exploited youth under the age of eighteen are now excluded from the definition of delinquent child and Minnesota began implementing No Wrong Door.¹³⁷ First, by excluding sexually-exploited children from the delinquency definition, Minnesota's Safe Harbor Law is now compatible with both Minnesota's Criminal Code and the Trafficking Victim's

CASS/CLAY SERVICE PROVIDER'S REGIONAL RESPONSE FOR HUMAN TRAFFICKING 9 (2015), http://www.rrcac.org/images/Cass_Clay_Regional_Human_Trafficking_Response_6-18-15_1_.pdf ("Minnesota Statutes section 609.324 increased penalties against adults convicted of patronizing minors engaged in prostitution from a \$250 minimum to a minimum of \$500 and a maximum of \$750."); DEP'T OF PUB. SAFETY, OFF. OF JUST. PROGRAMS, NO WRONG DOOR: A COMPREHENSIVE APPROACH TO SAFE HARBOR FOR MINNESOTA'S SEXUALLY EXPLOITED YOUTH (2013), [https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20\(FINAL\).pdf](https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20(FINAL).pdf). If the defendant is indigent they must pay \$100 under this statute, the fees collected are to be distributed as follows: forty percent to law enforcement, twenty percent to the county attorney, and twenty percent to the commissioner of public safety to establish a specific revenue fund given to organizations that assist sexually-exploited youth. *Id.*

131. MINN. STAT. ANN. § 145.4718 (West 2015).

132. JULIE ATELLA ET AL., SAFE HARBOR: FIRST YEAR EVALUATION REPORT 1 (2015), <https://www.wilder.org/WilderResearch/Publications/Studies/Safe%20Harbor/Safe%20Harbor%20First%20Year%20Evaluation%202015.pdf>.

133. DEP'T OF PUB. SAFETY, OFF. OF JUST. PROGRAMS, *supra* note 130, at 5. The total budget for the No Wrong Door program was approximately \$13.6 million for 2013 and 2014. *Id.* at 31.

134. THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 127, at 12.

135. *Id.* at 5.

136. MINN. STAT. ANN. § 609.321(7)(a) (West 2015).

137. MINN. STAT. ANN. § 609.321(14) (West 2015).

Protection Act.¹³⁸ Now, when Minnesota youth, even if they are sixteen or seventeen years old, engage in conduct that is classified as commercial sexual acts, they cannot be charged with a crime.¹³⁹

This change is significant because, under the 2011 legislation, children could still be adjudicated delinquents, despite the presence of a diversion option.¹⁴⁰ Without the provisions granting immunity from prostitution charges to all children under eighteen, children ages sixteen and seventeen would have either faced mandatory diversion or juvenile delinquency adjudication.¹⁴¹ Sex trafficking victims aged sixteen and seventeen would have been able to participate in mandatory diversion for their first prostitution offense, but would have been adjudicated delinquent for subsequent prostitution offenses.¹⁴² Furthermore, if the child failed to complete the diversion program, they could have been referred back to the juvenile court for delinquency adjudication.¹⁴³ By exempting all children under the age of eighteen from liability for prostitution-related offenses, the diversion program was repealed.¹⁴⁴ The eighteen and under exclusion is necessary because it affords all youths the same protections.

Second, Minnesota began making resources available for youths through No Wrong Door.¹⁴⁵ Specifically, No Wrong Door provides a “statewide network of victim-centered, trauma-informed services and safe housing, as well as Regional Navigators who are responsible for connecting youth with services and serving as experts for their communities.”¹⁴⁶ Minnesota’s program focuses on intervention, prevention, public official training, and seeks outcomes based on victims’ needs.¹⁴⁷ A recent study estimated a thirty-year return of thirty-four dollars for every dollar spent on intervention, housing, and health care.¹⁴⁸

138. See Trafficking of Victims Protection Act of 2000 § 103, 22 U.S.C. § 7101 (2000); MINN. STAT. ANN. § 609.322 (West 2015).

139. MINN. STAT. ANN. § 260C.007(31) (West 2015).

140. See THE ADVOCATES FOR HUMAN RIGHTS, *supra* note 127, at 22.

141. *Id.* at 33.

142. *Id.* at 4.

143. *Id.*

144. *Id.* at 59.

145. MINN. DEP’T OF HEALTH, SAFE HARBOR FOR MINNESOTA’S SEXUALLY EXPLOITED YOUTH, <http://www.health.state.mn.us/injury/topic/safeharbor/docs/MDHSafeHarborReferral.pdf> (last visited Jan. 12, 2017).

146. *Id.*

147. See NAT’L CONF. OF STATE LEGISLATURES, *supra* note 81.

148. Star Tribune Editorial, *Minnesota Law for Sex Trafficking Victims*, STAR TRIB. (Apr. 11, 2013, 7:04 PM), <http://www.startribune.com/minnesota-law-for-sex-trafficking-victims/202614381/>.

In response to those findings, Regional Navigators were identified.¹⁴⁹ Regional Navigators are regional community experts who help connect and coordinate services for youths.¹⁵⁰ There are currently eight organizations serving as Regional Navigators in Minnesota: Minnesota Indian Women's Resource Center, Down on Violence Everywhere, Support Within Reach, Heartland Girls Ranch, Southwest Crisis Center, Program to Aid Victims of Sexual Assault, Lutheran Social Services, Tubman, The Link, and Olmsted County Victim Services.¹⁵¹ All of the listed organizations have been trained to work with sexually-exploited youth and are able to direct youth to outside organizations to help with treatment or other services.¹⁵² There are six safe housing services that youth may be directed to by any of the Regional Navigators. The Link, 180 Degrees, Tubman, Life House, Lutheran Social Services, and Heartland Girls Ranch are all safe-housing options for sexually-exploited youth.¹⁵³

However, housing may be sparse because the number of total beds at each location ranges from two to fourteen.¹⁵⁴ From April 2014 to April 2015, shelter and housing services were provided to seventy-four youths.¹⁵⁵ There are a number of service providers that offer services besides housing.¹⁵⁶ Currently, there are fourteen listed organizations that can provide sexually-exploited children with victim-centered services.¹⁵⁷ These organizations are scattered throughout Minnesota and offer a variety of services.¹⁵⁸

149. See MINN. DEPT OF HEALTH, *supra* note 145.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* The Link in Minneapolis has six emergency shelter beds for thirteen to seventeen-year-olds and five transitional housing units for sixteen to twenty-four-year-olds. *Id.* 180 Degrees in St. Paul has fourteen shelter and residential beds for females ages ten to seventeen. *Id.* Life House in Duluth has two emergency shelter beds for youth ages eleven to seventeen. *Id.* Sol House is also operated by Life House and there are five bedrooms available for sixteen to seventeen-year-olds. *Id.* The number of beds available at Saving Grace operated by Lutheran social services in Brainerd is unknown. *Id.* Heartland Girls Ranch in Benson has eight transitional beds available for females ages twelve to seventeen. *Id.*

155. See Press Release, Minn. Dep't of Health, Minnesota Releases First Youth Sexual Exploitation Report and Recommendations to Improve Services (Nov. 17, 2015), <http://www.health.state.mn.us/news/pressrel/2015/safeharbor111715.html>.

156. See MINN. DEPT OF HEALTH, *supra* note 145.

157. *Id.*

158. *Id.* For example, Midwest Children's Resource Center in St. Paul provides sexually-exploited youth with comprehensive healthcare, mental health, and chemical dependency support. *Id.* In Duluth, Program for Aid to Victims of Sexual Assault provides education and employment support in addition to medical and

Between April 2014 and April 2015, there were referrals to service providers made for 121 children.¹⁵⁹ Out of the referrals to service providers and for housing, ninety percent of the youth were women and sixty percent lived in the Twin Cities.¹⁶⁰ Thus, having programs focused on assisting women in the Twin Cities will help ensure that victims are getting the services they need. Minnesota is unique when compared to other states because it has housing and additional services in place for sexually-exploited youth. Although services exist in all regions, it is important to note that the housing capacity is limited and there may be more victims needing treatment than can be served.¹⁶¹

V. Minnesota Can Become the Nation's Leader in How Sex-Trafficked Youth are Treated by Making Three Key Changes to the Current Safe Harbor Statute

a. Minnesota Is Close to Having a True Victim-Centered Approach

Minnesota was one of the first states to pass safe harbor legislation for sex-trafficked youth and has been a leader in combating child sex trafficking.¹⁶² Minnesota offers a series of important protections for sex-trafficked youth including: prohibiting children eighteen and under from being charged with prostitution; the creation of pretrial diversion programs; and the availability of services for sex-trafficked youth across Minnesota. Despite these fundamental provisions, there are three key changes Minnesota can make to its Safe Harbor Law to ensure that all sex-trafficked youth are properly treated as victims. A victim-centered approach ensures that victims do not experience any negative repercussions from the government, landlords, or employers because of their sexual exploitation. If Minnesota were to provide victims with the ability to clear prior prostitution convictions from their records, exempt victims from prosecution for crimes

legal services. *Id.* The Family Partnership in Minneapolis specializes in providing case management and after care services to sexually-exploited youth for boys seventeen and under and West African girls. *Id.*

159. *See id.*

160. *Id.*

161. *See Victims of Sex Trafficking Find Shelter on St. Paul's East Side*, PIONEER PRESS (Nov. 3, 2015, 12:37 PM), http://www.twincities.com/crime/ci_26253136/sex-trafficking-victims-shelter-opens-friday-st-pauls.

162. Editorial Board, *Minnesota Leads National Push vs. Sex Trafficking*, STAR TRIB. (June 11, 2014, 6:22 PM), <http://www.startribune.com/minnesota-leads-national-push-vs-sex-trafficking/262794451/>.

stemming from their exploitation, and make changes to sexual education classes in schools, then Minnesota would have a true victim-centered sex trafficking approach. These three key changes would allow victims of sex trafficking to learn about the realities of sex trafficking and leave the industry without being unfairly disadvantaged.

b. Minnesota Should Enact Record-Clearing Policies

First, Minnesota should look to states such as New York that employ record-clearing policies for prostitution and sex trafficking-related offenses. Victims convicted of prostitution before Minnesota's safe harbor legislation was enacted have a prostitution conviction on their record that would not be there if they were exploited today. Thus, victims from as recently as two years ago are plagued with a conviction that current victims do not have. Minnesota should recognize New York's philosophy behind vacating records, but should execute the idea differently. Although New York allows sex trafficking victims to bring motions to vacate their records, there are only a small number of victims who take advantage of this opportunity.¹⁶³ As of March 2014, almost four years after the New York legislation was passed, only thirty-eight sex trafficking victims had their record cleared of prostitution related offenses.¹⁶⁴

One of the most probable explanations is that victims are unaware that this relief is available to them.¹⁶⁵ If Minnesota were to adopt a record-clearing policy, it should notify all individuals who have had a prior prostitution conviction in Minnesota. Another explanation for the small number of people seeking relief in New York is the procedural obstacles that victims have to overcome. Victims have to find a lawyer to file a motion and they have to file the motion in a timely fashion. These procedural requirements present numerous disadvantages to indigent victims and those who may have recently gotten out of the industry, but are trying to remove an offense from years ago. To ensure that all victims of trafficking are not punished for crimes committed out of coercion, Minnesota should automatically clear all prostitution convictions for individuals who were under the age of eighteen

163. See Barnard, *supra* note 93.

164. *Id.* at 1484. In New York City there were 1,527 prostitution convictions in 2009 and 1,793 convictions in 2011. *Id.* at 1483. Almost all of the convictions are eligible to be cleared, which indicates there are a large number of people not taking advantage of the law. *Id.*

165. *Id.*

years old at the time of their arrest. Minnesota should review every prostitution conviction in the state. Any administrative burden would be outweighed by the positive results that victims would experience. By labeling those who are sex-trafficked as “victims,” there is nationwide recognition that victims should not be punished. When a victim seeks to clear his or her record, he or she is likely doing so because he or she is experiencing backlash for his or her record while trying to obtain employment, housing, custody, and immigration status.¹⁶⁶

In 2000, the Minnesota legislature passed a law which disqualifies certain individuals with criminal and juvenile records from working with vulnerable individuals in a number of professions.¹⁶⁷ Individuals with prostitution or prostitution-related charges are included in the class of people who are prohibited from working in certain jobs.¹⁶⁸ Often jobs that involve working with vulnerable groups of people are those that do not require a college or advanced degree and are among the lowest paying jobs,¹⁶⁹ which are jobs that sex trafficking victims likely apply for.¹⁷⁰ If Minnesota provided an automatic removal of prostitution related convictions that occurred when a child was under the age of eighteen, it would prevent victims from experiencing future consequences resulting from their sex trafficking conviction.

c. Minnesota Should Create an Affirmative Defense for Prostitution Related Crimes

The second key change that Minnesota should make is to create an affirmative defense to prostitution related charges. Under Minnesota law, juveniles can be charged with other offenses even if the underlying offense was prostitution. Pimps often provide their victims with drugs to get them addicted and keep exploiting them.¹⁷¹ This is especially true for pimps in

166. *Id.*

167. See Melissa Golke, *The Age of Consent: How Minnesota’s Safe Harbor for Sexually Exploited Youth Act of 2011 Falls Short of Fully Addressing Domestic Child Sex Trafficking*, 33 *HAMLIN J. PUB. L. & POL’Y* 201, 219 (2012).

168. *Id.*

169. Eve Tahmincioglu, *The 8 Lowest-Paying Jobs in America*, NBC NEWS, <http://www.nbcnews.com/id/38168029/ns/business-careers/t/lowest-paying-jobs-america/#.VlyJIOkXjgU> (last visited Jan. 12, 2017).

170. Eleanor Goldberg, *Sex Trafficking Victims Usually Can’t Escape Prostitution Charges. This Lawyer’s Working to Change That*, HUFFINGTON POST (May 20, 2015), http://www.huffingtonpost.com/2015/05/18/sex-trafficking-prostitution-charges_n_7119474.html.

171. Andrea L. Johnson, *A Perfect Storm: The U.S. Anti-Trafficking Regime’s*

Minnesota who are exploiting Native American women and children.¹⁷² In addition to some pimps requiring their victims to carry weapons, almost all youth can be prosecuted under truancy, runaway, or other status offenses. Roughly fifty-five percent of runaways and fourteen percent of truants who come into contact with law enforcement officials end up in court.¹⁷³ As a result, sexually-exploited youth commonly end up serving time in detention centers and do not receive the services that they need.¹⁷⁴ Not only would sex trafficking victims actually be treated as victims if they were granted an affirmative defense, but the state would end up saving a significant amount of money. The average cost of a detention bed in the United States is estimated to be \$88,000 a year, though this figure can vary significantly.¹⁷⁵ If victims received specialized services, it would decrease the likelihood of recidivism.¹⁷⁶ A detailed report, specific to Minnesota, found that there is a positive return on investment of at least thirty-four dollars for every one dollar used towards early intervention with adolescent girls at risk of sex trafficking.¹⁷⁷ Properly treating sex trafficking victims by not detaining them for non-prostitution offenses will further increase Minnesota's return on investment and provide victims with the resources that they need.

*d. Classes About Healthy Relationships and Sexual Abuse
Should Be Mandatory for All Children in Minnesota*

A recent report released as a part of the Hennepin County No Wrong Door Initiative highlights victim's opinions on how to prevent sex trafficking in Minnesota.¹⁷⁸ More than seventy

Failure to Stop the Sex Trafficking of American Indian Women and Girls, 43 COLUM. HUM. RTS. L. REV. 617, 629–30 (2012).

172. *Id.* at 620 (“In Minnesota, where the most research has been conducted, a 2007 state trafficking report found that twelve law enforcement officers and service providers had worked with a total of 345 American Indian sex trafficking victims in the previous three years.”).

173. Patricia J. Arthur & Regina Waugh, *Status Offenses and the Juvenile Justice Delinquency Prevention Act: The Exception that Swallowed the Rule*, 7 SEATTLE J. FOR SOC. SCI. 555, 556 (2009).

174. *Id.*

175. Anitto, *supra* note 76, at 67.

176. *Id.* at 68.

177. LAUREN MARTIN ET AL., MINN. INDIAN WOMEN'S RES. CTR., EARLY INTERVENTION TO AVOID SEX TRADING AND TRAFFICKING OF MINNESOTA'S FEMALE YOUTH: A BENEFIT-COST ANALYSIS 4 (2012), <http://www.castla.org/templates/files/miwrcc-benefit-cost-study-summary.pdf> (discussing cost-benefit analysis in terms of the benefit to the taxpayer through government expenditures).

178. Karen Zamora, *Sex-Trafficking Victims Share Their Stories in Report*

survivors of sex trafficking and their allies offered insight about the services that they believed could have helped prevent their exploitation and abuse.¹⁷⁹ The participants listed “[a]ccess to education about healthy relationships and sexual exploitation in an age-appropriate manner,” as being a missing, but a necessary, requirement for Minnesota’s youth.¹⁸⁰ Respondents reported that they did not receive useful information from their parents or guardians and had to rely on their sexual education classes in school to learn about relationships and sexual health.¹⁸¹ Critics of comprehensive sex education programs argue that abstinence-only education should be taught because it delays sexual activity and reduces teen pregnancy.¹⁸² Studies show, however, that abstinence-only education in the U.S. does not lead to abstinence, and that teens who receive an abstinence-only education are more likely to become pregnant.¹⁸³ Thus, it is crucial that students receive comprehensive sexual education in order to make informed decisions.

Although some survey respondents had sexual education classes in school, they described the classes as useless.¹⁸⁴ Instead of having open conversations about exploitation and abuse, many victims report that their classes were a mere recitation of facts.¹⁸⁵ For example, one respondent explains, “[I had sex ed] from my health teacher. It was a lot of facts, was kind of vague and boring and I didn’t learn much.”¹⁸⁶ Furthermore, the respondents report that the curriculum was out of touch with reality and teachers

Released by Hennepin County, STAR TRIB. (Jan. 25, 2016, 9:38 PM), <http://www.startribune.com/sex-trafficking-victims-share-their-stories-in-new-report-released-by-hennepin-county/366476121/>.

179. *Id.*

180. HENNEPIN COUNTY NO WRONG DOOR INITIATIVE, VOICES OF SAFE HARBOR: SURVIVOR & YOUTH INPUT FOR MINNESOTA’S MODEL PROTOCOL ON SEXUAL EXPLOITATION AND SEX TRAFFICKING 24 (2015), <http://www.hennepin.us/~media/hennepinus/your-government/projects-initiatives/documents/no-wrong%20-door-voices.pdf?la=en>.

181. *Id.* at 20.

182. See Steven Ertelt, *Barack Obama’s Federal Budget Eliminates Funding for Abstinence-Only Education*, LIFE NEWS (May 8, 2009), http://www.issues4life.org/pdfs/news_20090508b.pdf (taking the position that replacing abstinence-only education with sexual education is a “failed old approach that only increase[s] teen pregnancy and damages America’s greatest resource, our children”).

183. ADVOCATES FOR YOUTH, THE TRUTH ABOUT ABSTINENCE-ONLY PROGRAMS 2 (2007), <http://www.advocatesforyouth.org/storage/advyf/documents/fsabstinenceonly.pdf>.

184. HENNEPIN COUNTY NO WRONG DOOR INITIATIVE, *supra* note 180, at 20.

185. *Id.*

186. *Id.*

would not answer a majority of student questions.¹⁸⁷ As a result, many victims felt that they did not get enough information to make informed choices.¹⁸⁸

The respondents also stressed the importance of school and health officials creating a comfortable environment that encourages discussions about real-life situations.¹⁸⁹ Humor and openness were suggested methods to facilitate difficult conversations.¹⁹⁰ Another common recommendation is teaching children about sexual education at an early age and providing opportunities to continue the conversation throughout their adolescent years.¹⁹¹ Victims expressed their desire to have been presented with an honest and graphic description of prostitution.¹⁹²

Minnesota should implement the respondent's suggestions by allocating additional funding to schools.¹⁹³ Schools should not only make sexual education mandatory,¹⁹⁴ they should do so at various age-appropriate stages. At the minimum, children should be required to take a full year of sexual education in junior high as well as high school. Throughout these required courses, students should learn about healthy relationships and sexual abuse. Both topics should be entire units, which would allow students to have a meaningful opportunity to grapple with the information and ask questions. Finally, teachers should go through additional training that will provide them with strategies they can use to effectively convey the necessary information.

The Voices of Safe Harbor Report provides practical suggestions that Minnesota can implement in its efforts to stop child sex trafficking.¹⁹⁵ If children are educated about sexual abuse and healthy relationships, they will be able to make informed decisions, which will help reduce child exploitation. Educating children about the warning signs of sex trafficking and

187. *Id.* at 20–21.

188. *Id.* at 21.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* at 22.

193. See *Sex in the States: Minnesota*, SEX, ETC., <http://sexetc.org/states/minnesota/> (last visited Jan. 12, 2017).

194. Roland Martin, *Sex Education Should Be Mandatory in Schools*, CNN (updated July 25, 2016), <http://www.cnn.com/2011/10/29/opinion/martin-sex-education/>.

195. See HENNEPIN COUNTY NO WRONG DOOR INITIATIVE, *supra* note 180.

abusive relationships will give them greater insight about the dangers of trafficking.

Conclusion

Minnesota has made significant improvements to its treatment of sex-trafficked children with the Safe Harbor Law, but it falls short of truly treating exploited children as victims. A victim label indicates that sex-trafficked children are not at fault and thus should not be punished. In Minnesota, the existence of prior records with prostitution offenses and the ability to be charged with a prostitution-related offense further punish victims of sexual exploitation. Additionally, Minnesota needs to provide children with the opportunity to learn about child exploitation so they are informed about the realities of the industry. Once these changes are added to the housing opportunities that are already provided, Minnesota will have a comprehensive system that treats sexually-exploited children as victims.